

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 29-10-1996.

SPECIAL CIVIL APPLICATION No. 8140 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULKADAR M. SHEIKH

Versus

URBAN LAND TRIBUNAL Thro. EX-OFFICIO SECRETARY &
OTHERS.

Appearance:

Mr. M.I. Hava, Advocate for the petitioner.

Mr. L.R. Pujari, A.G.P. for the respondents.

CORAM : H.R.SHELAT, J.

29/10/96

ORAL JUDGEMENT

The petitioner calls in question the orders passed by the competent authorities on 25th November 1988 and 2nd March 1990 declaring 1537 sq.mtrs. of land in excess of the ceiling limit under the Urban Land (Ceiling & Regulation) Act, (for short 'Act') and confirmed in appeal.

2. The petitioner residing at Ahmedabad was holding the properties as follows;

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Sl.No.	Village	S.No.	C.S.No.	T.P.F.P.S.P.	Area	Construc-	Use/
No.	No.	No.	tion	right.			

1. Shahpur- 4627,4627/1 - - - (158 sq.yds)Chawl Residen-
1 4628,4628/1, 132 sq.mtrs. tial
4628/2,4628/3, Ancestral.
4628/4,4628/5,
4629,4629/1,
4629/2,4629/3.

2. Shahpur- 4461 - - - (54 sq.yds) Residen- -Do-
1B 45 sq.Mts. tial

3. Shahpur/ 3388 - - - (75 sq.yds) -Do- -Do-
1B 63 Sq.Mtrs.

4. S..

i i i i i i
1B 61 sq.Mtrs.

5. Shahpur/ 3390,3391 - - - 111 sq.Mrs. -Do- -Do-
1B

6. Shahpur/ 685,685/1 to - - - 1400 sq. -Do- -Do-
1A 685/29 rooms. yds.
1170 sq.
Mtrs.

7. Shaikh- - 3 300 12 954.86 -Do- As a member

pur- 301 Mtrs. in Housing
Khanpur 305 Society.

2537 sq.Mtrs.

As per the requirement of the Act under Section 6(1), the petitioner and his mother who was at that time alive filed separate forms declaring the above stated properties. Undergoing necessary formalities the competent authority on 25th November 1988 held qua the form filled up by the petitioner that he was holding 1537 sq.meters of land in excess of the ceiling limit. The competent authority found that when no evidence was led with regard to the area covered by the construction the whole property bearing Survey No. 300, 301 and 305 was required to be considered as the open land. The area of that land was 954.86 sq.mtrs. So for as properties bearing City Survey Nos. 685, 685/1 to 685/29 are concerned, the competent authority found that the passage land of 582 sq.meters was required to be considered as the excess land. Accordingly he held that 1537 sq.meters of land was excess of the ceiling limits. The another competent authority dealing with the case of the mother of the petitioner passed the order, the copy of which is produced at Annexure 'E'. On the basis of this order the said competent officer on 2nd March 1990 passed the similar order qua the form of the petitioner. The petitioner preferred the appeal being Appeal No. 543 of 1988 and that came to be rejected on the ground that in the absence of any evidence that the buildings were constructed, according to the plans and permission, the construction of the building must be held unauthorised and the land must be treated to be the open land. After the order on the form filed by the mother of the petitioner was passed the petitioner filed the appeal No. 75/90 which also came to be dismissed on the ground that the issue in question was already adjudicated upon in the previous appeal No. 543/88. Being aggrieved by such order the present petition has been preferred challenging the legality and propriety of the orders passed.

3. On behalf of the petitioner it is contended that no reasoned order is passed by the competent authorities and also the authorities in appeal. They have cursorily dealt with the point and have scrawled. On the whole of the land the houses were constructed long ago from the date the Act came into force and therefore the whole of the land was required to be excluded from computation for the purpose of ceiling limit. Further the property shown at serial No.7 hereinabove ought to have been excluded in view of Section 19 of the Act, because it was the land belonging to the

co-operative society on which the petitioner had constructed the house. No doubt on behalf of the respondents the learned A.G.P. has vehemently supported the orders passed by the authorities but the contention raised on behalf of the petitioner cannot lightly be swept under carpet as they carry weight in the eye of law.

4. The object of the Act is to prevent concentration of lands in urban area in the hands of few or might and speculation and profiteering, to bring about socialisation of urban land to subserve the common good by equitable distribution by taking land from those holding excess and provide to the weaker section of the society and others with the growth of population are in need of for their shelters the basic and imperative requirement of the human being. While determining the excess land the area of the land not usable for the construction of houses or dwelling units because of prohibitory provisions in law or rules framed under the law has to be excluded from computation. Further, the land covered by the construction of the building is required to be excluded from the computation. I am fortified in my view by the decision of the Apex Court in the case of Smt. Meera Gupta vs. State of West Bengal and Others - 1992 S.C. 1567 wherein it is laid down that the land on which the construction is made has to be excluded while computing for the purpose of ceiling limits. Here in this case, the properties shown at serial Nos. 1 to 6 are ancestral buildings constructed prior to the Act came into force which was not in controversy before me. The sanads produced at Annexure F show that the properties mentioned at Serial Nos. 1 to 6 are constructed on the whole of the land except the property shown at Serial No.6 bearing City Survey Nos. 685, 685/1 to 685/29 where some land admeasuring 417 sq.meters is kept open for the purpose of ingress and egress qua the chawl. When there are construction as mentioned in the abovereferred table, the whole of the land covered by construction ought to have been, as per the decision of the Supreme Court, excluded; and the land kept for the passage being the appurtenant land and also covered under the head 'Additional Appurtenant Land' required to be excluded ought to have been excluded. Accordingly if computation is made as far as first 6 properties are concerned, no portion of the land can be said to be surplus.

5. So far as the property mentioned at Serial No. 7 is concerned, the same is also required to be excluded in view of Section 19 of the Act. It is the plot land belonging to the society and allotted to the society for the purpose of constructing a residential house. The petitioner being the member of the society has constructed the residential house on the plot covering the area of 128.41 sq.meters. As that

property is covered by Section 19(iv), the whole of the land is required to be excluded. Thus the whole of the properties held by the petitioner is required to be excluded. When that is done, no portion of the land can be said to be in excess of the ceiling limit. The concerned authorities have, without considering the above factors and without assigning any reasons, passed the order. The same being inconsistent with law requires to be quashed and set aside. There is now necessity to discuss about the form filled up by the mother of the petitioner who is not alive, and further it was with regards to the above properties wherein she was having her due share which fell to the share of the petitioner on her demise and whole of the properties came to be owned by the petitioner alone. The above computation is made as if the petitioner alone is the owner of the properties.

6. In the aforesaid circumstances, the petition is allowed. The orders of the competent authorities passed on 25th November 1988 and 2nd March 1990; and the orders passed in appeal on 31st August 1990 and 29th June 1991, are hereby quashed and set aside. Consequently and the notification under Section 10(3) of the Act dated 4-10-1990 is also quashed and set aside; and it is hereby declared that the petitioner does not hold the land in excess of the ceiling limit. No costs in the circumstances of the case. Rule is made absolute.

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